



Bail Slip in CrI.RC.515/2017

The Petitioner/Accused namely Abdul Sattar S/o.Abdul Salam aged 45 years was directed to be released on bail in and by the order of this court dated 07/04/2017 made in CrI.RC.No.515/2017 & CrI.M.P.No.4536 and 4929/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.RC.No.515 of 2017

Abdul Sattar

... Petitioner

Vs.

S.Sumitha

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records in C.A.No.4 of 2016 dated 24.10.2016 on the file of the Judicial District Principal Sessions Judge, Thiruvallur and the STC.No.6 of 2014 dated 21.11.2015 on the file of the Judicial Magistrate Fast Track Court, Thiruvallur and to set aside the same.

For Petitioner : Mr.Jugal Kumar

For Respondent : Ms.C.S.Monica

O R D E R

This petition has been filed to call for the records in C.A.No.4 of 2016 dated 24.10.2016 on the file of the learned District Principal Sessions Judge, Thiruvallur and the STC.No.6 of 2014 dated 21.11.2015 on the file of the learned Judicial Magistrate Fast Track Court, Thiruvallur and to set aside the same.

2. The petitioner/accused in STC.No.6 of 2014 was convicted by the Judicial Magistrate Fast Track Court, Magisterial level at Thiruvallur, by the judgment dated



21.11.2015 for the offence under Section 138 of Negotiable Instruments Act, the respondent is the complainant.

3. The gist of the case is that the petitioner and the respondent are known to each other for quite some time. During April 2014, the petitioner borrowed a sum of Rs.3,00,000/- to meet his daughter's marriage expenses and promised to repay the same within a period of two months. Believing the words, taking advantage of acquaintance between them, the respondent had given a sum of Rs.3,00,000/- as loan. In discharge of such liability, he had issued a cheque of Rs.3,00,000/- as Ex.P1 and also the pro-note as Ex.P8 in favour of the respondent's sister. The cheque was presented and it was dis-honoured. Thereafter, Ex.P3 the legal notice was issued which was received, reply sent as Ex.P5. Since reply was untenable, the same was rejected and a complaint has been filed. The reply fact is that he had received a sum of Rs.97,000/- for the marriage expenses at that time, the cheque was given as security which has been filled up for a sum of Rs.3,00,000/- and the same was not acceptable and hence, the case has been filed.

4. During trial in the trial Court, PW1 to PW4 were examined, PW1 is the complainant, PW2 and PW3 are the Bank Managers of the petitioner and the respondent's Bank. PW4 is the sister of the complainant PW1 who marked Ex.P1 to Ex.P10. On the side of the defence, witnesses were examined as DW1 to DW3 and marked Ex.D1 to D6. The accused admitted the issuance of cheque Ex.P1 with only contention that the cheque was issued only for the amount of Rs.97,000/- not for a sum of Rs.3,00,000/-. Further he also produced Ex.D2 C.D records the phone conversation between the petitioner/accused and the respondent/complainant and thereafter, a complaint given to the Superintendent of Police.

5. The trial Court considering all the aspects, have convicted the petitioner/accused.

6. The contention of the petitioner is that on 21.08.2014 a sum of Rs.1,00,000/- was borrowed from the respondent. After deducting the interest of Rs.3,000/- only Rs.97,000/- was handed over to the petitioner and at that time, the cheque and pro-note sign handed over to the respondent as security. Misusing the same, a case has been lodged and filed the above petition. Thereafter also, the petitioner had paid a sum of Rs.15,000/- on 26.05.2015 and Rs.14,500/- on 01.09.2014 in support of the same, he had filed Ex.D1 Bank Statement has been produced. Further Ex.D2 is the C.D. compact in which the phone conversation between the petitioner and the respondent is



recorded to show that the amount taken as loan is only for a sum of Rs.1,00,000/-. For technical reason that since certificate under Section 65-B of the Evidence Act has not been produced, the CD was not considered, which is not proper. Further the petitioner had examined DW3 is the friend who had confirmed and corroborated the evidence of DW1, these facts have not been considered by both the Courts below. He further submitted that considering the petitioner's age, the Lower Court had reduced the sentence of six months to three months and confirmed the trial Court's judgment in other aspects.

7. The learned counsel for the respondent/complainant submitted that the petitioner has been making false claims. The petitioner was unable to produce any materials and in contention of his submission, the petitioner neither produced any materials nor proved any contention of the evidence by way of cross examination. The Lower Appellate Court considered all these aspects. Further she referred to para Nos.21 & 22 wherein the Lower Court had given a reason that "the contents of the C.D. This Court holds that Ex.D2 is not proved in its proper form, inspite of sufficient opportunity available to the accused. Hence, it is inadmissible in evidence to prove the case of the accused." Likewise, Ex.D4, Ex.D5 and Ex.D6 are the documents from which it is seen that there is some transaction between DW2 and PW4. Further the trial Court by considering all these aspects by well reasoned judgment had convicted the petitioner. The Lower Appellate Court confirmed the trial Court in all aspects without assigning any reason had reduced the sentence of six months to three months. The petitioner is not an aged person, the petitioner was aged about 43 years in the year 2015 and when the appeal was considered he was aged about 45 years and hence the age and family circumstances cannot be a consideration. The Lower Appellate Court without any material and without proper reason had modified the sentence. Hence, further submitted that the petitioner is resource person residing with his family and just for evading the payment is taking such steps from the year 2014, the respondent is denied of her money in a rightful manner.

8. Considering the submissions and on perusal of the materials, finding the Lower Appellate Court had not given any reason for reducing the conviction of six months to three months, this Court sets aside the order of the Lower Appellate Court in modifying the sentence and the original sentence of passed by the trial Court is restored.



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9. Accordingly, this Criminal Revision Petition is dismissed. The trial Court is directed to take appropriate steps to secure the accused.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

dna/mpl

To

- 1.The District Principal Sessions Judge,
Thiruvallur.
- 2.The Judicial Magistrate Fast Track Court,
Magisterial level at Thiruvallur.
- 3.The Chief Judicial Magistrate,
Tiruvallur.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.Jugal Kumar, Advocate SR.No.13235

Cr1.RC.No.515 of 2017

GPL(CO)
CB(22/03/2022)